

Ward committees revisited

LOCAL GOVERNMENT LAWS AMENDMENT BILL ON WARD COMMITTEES AND OTHER MATTERS

Parliament has nearly completed its work on the Local Government Laws Amendment Bill which was tabled towards the end of 2007. Many of its provisions are technical in nature and serve to clarify local government laws. However, some provisions are very important from a policy perspective. The most significant changes are discussed here.

Ward committees

An earlier version of the Local Government Laws Amendment Bill suggested that ward committees are compulsory for local and metropolitan municipalities (see LG Bulletin 2007(5) p 7). The latest version reverts to the original situation: only if a municipality establishes ward committees is it bound by the legal framework for ward committees in the Municipal Structures Act.

The Bill changes this framework significantly by providing that the ward councillor can no longer be the chairperson of the ward committee. Instead, it provides that the ten additional members of the ward committee elect a chairperson from among themselves. The municipal council must determine a procedure for how the ward committee elects its chairperson or how the chairperson is voted out of office. This provision will fundamentally change the dynamics in many ward committees, which will become less dependent on the goodwill and efficiency of the ward councillor. Indeed, research has shown that too many ward councillors have either neglected or misused “their” ward committees. In the new system, ward committee meetings can take place even when a negligent ward councillor chooses not to attend. Similarly, the ward councillor who wants to use the committee for political ends can no longer

do that by using his or her position as chairperson. The assumption is thus that a community member will make for a better chairperson than a ward councillor.

It could be said that the Bill is overzealous in excluding ward councillors altogether. Should the committee not have the option of electing the ward councillor as chair? The answer must be that the noble intentions behind the ward committee can only succeed if the committee ceases to be the natural extension of the ward councillor and operates more independently from the municipality.

If that is indeed the objective, the amendment to the committee’s term of office is puzzling. The Bill now requires that the term of ward committees must “correspond” to the council’s term of office. Ward committees with terms of office that extend beyond the council’s term are no longer permitted. Similarly, ward committees with terms of office that expire before the council’s term ends, are also no longer legal. What purpose is served by this other than to facilitate the political alignment of the ward committee with an incoming ward councillor? If the objective is continuity and the preservation of energy in the committee for longer terms of office, this could be achieved without making such an explicit link to the council’s term. Why must the composition and nature of the community’s voice be revisited around the time that the community has elected a political representative? Should the committee’s term not run independently of the council’s term?

The Bill further amends the framework with provisions dealing with the finances of ward committees and their members. It says that a municipality may allocate funds and resources to enable ward committees to perform their functions. It must develop criteria for paying out-of-pocket expenses to ward committee members and these must be paid from the municipal budget. The MEC for local government must determine a provincial framework for these expenses.

The Bill also provides that a municipality may allocate funds to a ward committee to enable it to “undertake development” in the ward, which is a recipe for a further

deterioration of the situation surrounding ward committees. The legitimacy of ward committees as representatives of the broader ward community is contested in many communities, which already hampers their ability to fulfil their role as the voice of the community. These legitimacy problems must be solved before ward committees are encouraged to become custodians of municipal development budgets.

The Bill does not make any provision to facilitate the transition to the new system. This means that, when this Bill becomes law, municipalities will have to revisit their ward committee policies to:

- provide for the election of ward committee chairs;
- if need be, extend or shorten the term of office of existing ward committees; and
- deal with financial support for ward committee (members), if it so wishes.

The Bill does not deal with whether the extension of the term necessitates new elections. Will the members who were elected for a short term stay on until local government elections in 2011, or are fresh elections required? Ultimately, the municipality itself is empowered to address these issues in its revised ward committee policy.

Municipal manager's term of office

Under the Municipal Systems Act (the Systems Act), a municipal manager is appointed for a fixed term that must expire two years after the election of the next council of the municipality. The Bill suggests that this term is shortened to “a maximum of five years, not exceeding a period ending six months after the election of the next council”. The new provision thus includes two limitations. First, the term may never be longer than five years. Second, it may not extend beyond six months after the election of the next council. The Single Public Service Bill intends to remove the provision in the Systems Act dealing with the municipal manager's term of office.

Accounts to landlords

The Bill adds provisions to the legal framework surrounding municipal billing. First, when the owner of a property requests copies of municipal accounts that were sent to the occupier (e.g. tenant) of the property, the municipality is obliged to forward those copies.

Second, the municipal certificate that is required for a property transfer and confirms that all municipal accounts are paid is currently valid for 120 days. The Bill suggests shortening that to 60 days.

- Ward councillors may no longer be chairpersons of ward committees.
- A ward committee's term of office is linked to the council's term.
- Municipalities may pay ward committee members for out-of-pocket expenses.
- The national minister may instruct the MEC to investigate a municipality.
- The MEC can investigate violations of the Code of Conduct when the council has failed to do so.
- Municipalities no longer have to (value or) rate public service infrastructure.

Section 106 investigations

When the MEC for local government institutes an investigation into maladministration, fraud, corruption or other malpractice in a municipality in terms of section 106 of the Systems Act, he or she must, in terms of current law, notify the National Council of Provinces (NCOP).

The Bill suggests a number of changes.

- the MEC must notify the NCOP within 14 days;
- the MEC must simultaneously inform the national ministers for local government and finance of the enquiry;
- both the national local government minister and the NCOP may request the MEC to conduct an investigation into a specific municipality; and
- the MEC must table a report detailing the outcome of the investigation in the provincial legislature. The local government and finance ministers and the NCOP must also receive this report.

All of this must done “within 90 days from the date on which the Minister requested the investigation”.

The inclusion of this timeline brings up a number of questions. It implies that the Minister's “request” is in actual fact an instruction. Apparently, the compulsory nature of the “request” does not apply when the request comes from the NCOP. Be that as it may, national instructions such as these can only be issued legally in terms of section 100(1) of the Constitution, which permits the national executive to issue directives. The minister must therefore adhere to this provision if he or she intends his “request” to be compulsory.

Nor is it clear whether the MEC's duty to report to the national ministers of local government and finance always applies, or only when there has been a request for an



Ward committee members from the Greater Tubatse Municipality participating in a meeting.

investigation. The formulation suggests the latter.

The new framework for section 106 investigations confirms the National Treasury's interest and involvement in monitoring good governance by municipalities as it will now also be the recipient of information on these investigations. It furthermore signals that national government is monitoring municipalities' governance and that it may seek to compel provincial governments to launch investigations.

Conflicts of interest

The Bill makes it clear that councillors and municipal staff members may not be parties to, or beneficiaries of, any contract with the municipality for goods or services. It removes the provisions in the Systems Act that provided for special consent allowing councillors and staff members to be involved in contracts with the municipality. This settles the inconsistency between the Systems Act and the Municipal Finance Management Act on this issue.

MECs and the Code of Conduct

In terms of the Systems Act, the MEC for local government may appoint someone to investigate breaches of the Code of Conduct and to recommend whether a councillor should be suspended or dismissed. The Bill provides more clarity on when the MEC can use this power, namely, only (1) when a municipal council does not conduct its own investigation and (2) when he or she considers it necessary.

The Bill suggests that municipal managers and section 56 managers declare their interests (shares, membership of corporations, directorships, interest in property etc.) within 60

days of their appointment. The council may decide, weighing the public interest against the need for confidentiality, to make some or all declarations public. If the Single Public Service Bill is passed, this provision will be removed from the statute books.

Property rates

The Bill makes changes to the Property Rates Act 6 of 2004, most of which are technical in nature but some are noteworthy.

Municipalities no longer need to rate and value public service infrastructure if they do not intend levying rates on it.

Municipalities will welcome the changes to section 3 of the Act, which outlines the requirements for a municipality's rates policy. Previously, a municipality was obliged to quantify the costs of exemptions, rebates and reductions as well as the benefits to the local community. The same applied to exclusions and the phasing in of rates on properties. The new provisions mitigate these requirements by requiring municipalities to only "provide reasons" for exemptions, rebates and reductions without having to quantify the costs and benefits.

The Minister's powers to curb rates revenues are also extended. The minister may now set an upper limit on:

- the growth in revenue derived from all property rates in a municipality; or
- the growth in revenue derived from a specific category of properties.

This is in addition to the minister's existing power to set an upper limit to the increase in rates on (specific) categories of property.

Comment

For the most part, the Bill provides relief for lawyers and practitioners working with the detail of the law. However, the changes to the ward committee system are significant. They give rise to various questions surrounding the objective of ward committees. The amendments to the provincial investigative powers are also significant as they signal a much stronger national interest in the monitoring of municipalities.

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